

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying Genaro M. Roybal's request for corrective patent for Homestead Entry Patent No. 2262.

Affirmed.

1. Administrative Authority: Generally--Federal Land Policy and Management Act of 1976: Correction of Conveyances

The Secretary has the authority to issue corrective patents when necessary to eliminate errors. A party seeking a corrective patent initiates the proceeding by filing an application asserting ownership of lands described in and based upon a patent or other document containing an alleged error. However, when the error does not lie in the patent or other document under which the applicant is asserting ownership, but lies in a patent issued to another party, the Secretary does not have authority to correct the other party's patent.

APPEARANCES: Genaro M. Roybal, Albuquerque, New Mexico, pro se; Margaret C. Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for BLM.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Genaro M. Roybal (Roybal) has appealed from a July 9, 1987, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying his request for issuance of a corrective patent for Homestead Entry Patent No. 2262.

On November 12, 1986, Roybal wrote to the New Mexico State Office, BLM, seeking assistance in his attempt to obtain clear title to the lands described in Patent No. 2262, and noting a conflict between the description of lands conveyed in that patent and the lands described in subsequent Patent No. 4139.

The lands in question are administered by the Albuquerque District Office, and on November 20, 1986, Roybal's request was forwarded to the District Office. On December 5, 1986, the District Office sent a memorandum to the State Office noting the conflict between the two homestead entries,

stating that BLM had apparently issued two patents for lot 5 (SW[^] SE[^]) sec. 31, T. 16 N., R. 13 E., New Mexico Principal Meridian, New Mexico, and requesting guidance as how to clear the title for the Roybal family.

The State Office then sought advice from the Regional Solicitor. On June 9, 1987, the Field Solicitor for the Southwest Region sent a memorandum to the New Mexico State Office. That memorandum set out a detailed statement of the facts in this case which we quote:

A survey approved September 30, 1882 describes the subject Section 31 as comprised of Lots 1-6, NE[^], E\ NW[^], E\ SW[^] and N\ SE[^]. The present title plat indicates that the E\ SW[^] and Lot 6 of Section 31 within the S[W][^] of Section 31 are patented under Patent No. 2262. The subject Lot 5 of Section 31 lies within the SE[^] of Section 31 and is indicated as patented not only under Patent No. 2262 but also patented under Patent No. 4139. The N\ SE[^] and Lot 4 of Section 31 are also indicated as patented under Patent No. 4139.

The error leading to the cloud on the title of Lot 5 was apparently in the description of Homestead Entry No. 9743 dated August 6, 1906 leading to Patent No. 4139 dated August 28, 1907 issued to Teodoro Ortega. The patented land was described therein as the SE[^] of Section 31, containing 147.70 acres. The application for Homestead Entry No. 9743 could and probably should have described the entry as Lots 4 and 5 and the N\ SE[^] of Section 31 containing 147.70 acres rather than the SE[^] of Section 31. Nevertheless, the entry proceeded to patent No. 4139 and was issued to Teodoro Ortega on August 28, 1907 for the SE[^] of Section 31 containing 147.70 acres as an irregular quarter section.

On July 9, 1987, the State Office issued its decision denying Roybal's request for a corrective patent because the original patent was correct. The decision further noted that two patents had issued for lot 5, and that Patent No. 2262 was issued first. A copy of the Field Solicitor's opinion was enclosed with the decision.

[1] Roybal seeks a corrective patent pursuant to 43 U.S.C. | 1746 (1982). This statute provides for the issuance of corrective patents when necessary to eliminate errors. The applicable regulations are found at 43 CFR Subpart 1865. A party seeking a corrective patent initiates the proceeding by filing an application pursuant to 43 CFR 1865.1-1, which provides (in part) "[a]ny claimant asserting ownership of lands described in and based upon a patent or other document containing an alleged error may file an application to correct the alleged error."

As can be seen, the statute and regulations are intended to address those conditions where a party finds a flaw in the title of his lands because the patent issued to him or his predecessors contains an error.

We find nothing in the case file which would refute Roybal's statement that a patent to lot 5 was issued to his predecessor-in-interest, nor does he claim that Patent No. 2262 improperly described that lot. Rather, he

properly asserts that a subsequent patent, Patent No. 4139, contained a description which can be construed to include lot 5. The error does not lie in the patent under which he is now asserting a right. Had present owners under chain of title from Patent No. 4139 applied for a corrective patent, a strong argument could be made that a corrective patent should issue. However, as the case now stands, those parties have not sought a corrective patent and the Department has no authority to correct Patent No. 4139. See Rosander Mining Co., 84 IBLA 60 (1984). Lacking that authority, the only assistance the Department can now afford is to set out the circumstances leading to the cloud of title on lot 5.

As noted in the Field Solicitor's opinion, other avenues are available to Roybal. He may take appropriate legal action to quiet title in a local court, or he may reach an amicable settlement with the successors in interest to Teodoro Ortega. By seeking legal advice Roybal can best determine how to now proceed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge